

Before the
Administrative Hearing Commission
State of Missouri



SOMMERS LEASING COMPANY, INC.,)	
)	
Petitioner,)	
)	
vs.)	No. 09-0930 RS
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

Sommers Leasing Company, Inc. (“Sommers Leasing”) is liable for sales tax in the amount of \$15,672.75, plus additions to tax of \$783.64, plus statutory interest, and use tax in the amount of \$1,418.49, plus statutory interest.

Procedure

On June 30, 2009, Sommers Leasing filed its complaint appealing the final decisions of the Director of Revenue (“the Director”) in a series of three sales tax assessments and twenty use tax assessments. On July 21, 2009, the Director filed his answer. On April 8, 2011, by leave of the Commission, Sommers Leasing filed its first amended complaint. On May 4, 2011, the Director filed his answer to the amended complaint.

We held a hearing on April 18, 2013. Michael S. Huffman represented Sommers Leasing. Christopher R. Fehr represented the Director. This case became ready for our decision on December 2, 2013, when the last written argument was due.

Findings of Fact

1. Sommers Leasing, Inc., is a Missouri corporation with a physical address in Grain Valley, Missouri, and a postal address in Oak Grove, Missouri.
2. From August 2007 through February 2009, the Director conducted a sales and use tax audit of Sommers Leasing.
3. The period covered by the audit was April 1, 2002 through March 31, 2007.
4. The primary purpose of Sommers Leasing was holding machinery and equipment.
5. The sales tax assessment at issue relates to Sommers Leasing's purchase of the following machinery:
 - a) 1 Case Uniloader;
 - b) 2 Case Backhoes; and
 - c) 1 Kent hydraulic breaker.
6. The aforementioned machinery was used to clean up terraces and ditches and remove fence rows from farmland comprised of 350 – 400 acres. Sommers Leasing did not pay sales tax on this machinery.
7. Harve Sommers, the president of Sommers Leasing, executed a sales/use tax exemption certificate for the purchase of the Kent hydraulic breaker.
8. The use tax assessment at issue is derived from a sampling of purchases between January 1, 2005 and December 31, 2005. This sample period was used to extrapolate the sales and use tax for the entire audit period.
9. On February 10, 2009, Sommers Leasing signed an agreement with the Director that consented to the aforementioned sampling.
10. On May 1, 2009, the Director assessed sales tax in the amount of \$15,672.75 and additions to sales tax of \$3,918.19.
11. Also on May 1, 2009, the Director assessed use tax in the amount of \$1,418.49.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.¹ Sommers Leasing has the burden to prove that it is entitled to exemption on certain assessed transactions and/or that the Director's assessments are otherwise erroneous such that the company is not liable for them.² Our duty in a tax case is not merely to review the Director's decisions, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.³

Section 144.020.1⁴, which defines sales tax, provides in relevant part:

A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, . . . a tax equivalent to four percent of the purchase price paid or charged[.]

Section 144.610.1, which defines use tax, provides in relevant part:

A tax is imposed for the privilege of storing, using or consuming within this state any article of tangible personal property purchased on or after the effective date of sections 144.600 to 144.745 in an amount equivalent to the percentage imposed on the sales price in the sales tax law in section 144.020. . . .

A statute imposing a tax is strictly construed in favor of the taxpayer and against the taxing authority.⁵ However, the Missouri Supreme Court has declared that:⁶

Tax exemptions are strictly construed against the taxpayer. . . . An exemption is allowed only upon clear and unequivocal proof, and doubts are resolved against the party claiming it. . . . Exemptions

¹Section 621.050.1. Statutory references are to RSMo 2000, unless otherwise noted.

²Sections 136.300.1 and 621.050.2.

³*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁴RSMo Supp. 2001.

⁵*President Casino, Inc. v. Director of Revenue*, 219 S.W.3d 235, 239 (Mo. banc 2007).

⁶*Branson Properties USA v. Director of Revenue*, 110 S.W.3d 824, 825-26 (Mo. banc 2003).

are interpreted to give effect to the General Assembly's intent, using the plain and ordinary meaning of the words.

The Agricultural Exemption

Sommers Leasing asserts that the machinery purchases were exempt from sales tax pursuant to §144.030.2, which provides:⁷

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied, assessed and payable pursuant to the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

* * *

(23) ...all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers, and any freight charges on any exempt item... As used in this subdivision, the term “**farm machinery and equipment**” means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon and any accessories for and upgrades to such farm machinery and equipment, rotary mowers used exclusively for agricultural purposes, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail[.]

(Underline added).

The machinery at issue for the sales tax assessment was used to clean terraces and ditch rows, and to take out fences on what was to be an assemblage of farmland. This use of the machinery was in the nature of clearing ground and removing debris and not in the nature of producing agricultural commodities. Section 144.030.2(23) requires that machinery must be used exclusively for agricultural purposes to be exempt, and this equipment was not used exclusively for such purposes. Therefore, purchases were not exempt from sales tax.

⁷ RSMo Cum. Supp. 2013.

We agree with the Director that Sommers Leasing is liable for sales tax in the amount of \$15,672.75 for the purchase of these machines.

The Sampling Methodology

Sommers Leasing does not deny it is subject to use tax. Rather, it argues the sampling method underlying the assessments of use tax was not accurate. Furthermore, it argues that it did not agree to the statistical sampling methodology. However, Sommers Leasing neither provided a more accurate method of calculating use tax, nor offered any evidence that the records it provided were sufficient to establish any result different than reached by the sampling method. Furthermore, from the beginning of the audit, August 2007, to the time of the hearing, April 18, 2013, Sommers Leasing had nearly six years to gather and produce purchase records to support an approach other than sampling. Consequently, based on what was produced at the hearing, we can divine no other method or interpretation of the evidence on which we should base a different result, and Sommers Leasing offered none of its own.

The taxpayer has failed to meet its burden to show the Director's calculation of assessments was erroneous. Therefore, we uphold the Director's use tax assessment in the amount of \$1,418.49.

Additions

In addition to the tax, the Director charged Sommers Leasing additions to tax on its three assessments for unpaid sales tax.

Section 144.210.1 provides, in relevant part:

...except that when a purchaser has purchased tangible personal property or services sales tax free under a claim of exemption which is found to be improper, the director of revenue may collect the proper amount of tax, interest, and additions to tax and penalty from the purchaser directly.

Section 144.250.3 provides:⁸

In the case of failure to pay the full amount of tax required under sections 144.010 to 144.525 on or before the date prescribed therefor, determined with regard to any extension of time for payment, due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

Negligence is a failure to make a reasonable attempt to comply with the tax laws.⁹ Sommers Leasing claims it made a reasonable attempt to comply with the law when its president executed a sales/use tax exemption certificate for the purchase of the Kent hydraulic breaker. Under the totality of the circumstances and existing law, we do not find that the issuance of an exemption certificate for a hydraulic rock breaker, and Sommers Leasing's avoidance of sales tax on other excavating equipment, indicates a reasonable attempt by Sommers Leasing to comply with sales tax law. Therefore, we agree with the Director.

Sommers Leasing is liable for additions to tax equal to five percent of the deficiency.

Five percent of \$15,672.75 is \$783.64.

Interest

Section 144.170 imposes interest on delinquent sales tax and use tax, as calculated by § 32.065. Therefore, Sommers Leasing is liable for this statutory interest on its delinquent sales tax and use tax for the periods at issue.

Summary

Sommers Leasing is liable for sales tax in the amount of \$15,672.75, plus additions to tax of \$783.64, plus statutory interest, and use tax in the amount of \$1,418.49, plus statutory interest.

SO ORDERED on April 30, 2014.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁸ RSMo Cum. Supp. 2013. This section was last amended in 2003.

⁹ *Hiatt v. Director of Revenue*, 899 S.W.2d 870, 872 (Mo. banc 1995).